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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4099 OF 2021

Nitin Wasudeorao Wankhade

..... Petitioner

Vs.

All India Council for Technical
Education, New Delhi and Ors.

..... Respondents

Mr. Abhijit Desai a/w Mr.Karan Gujra i/b M/s.Desai Legal for the
Petitioner

Smt.P.J.Gavhane, A.G.P. for the State

Ms.Anjali Neel Helekar for Respondent no.1

Mr.Manish Kelkar a/w Mr.Ajinkya Udane and Mr.Amarjit Prasad for
Respondent nos.4 and 5

**CORAM: S.V. GANGAPURWALA &
S. M. MODAK, JJ.**

DATED : JULY 28, 2022

P.C.

1 At the request of the learned Counsel for the Petitioner, leave
to add Joint Director of Higher Education as party. Learned A.G.P.
accepts notice for Joint Director of Higher Education.

2 The Petitioner claims salary as per the pay scale. We have
heard the learned Counsel for the Petitioner and the learned
Counsel for the Institution.

3 The fact that the Petitioner was appointed in the year 2009 as an Assistant Professor is not disputed. It is also not disputed that at least till May 2020, the Petitioner was officiating his duties with the Respondent Institution.

4 According to the learned Counsel for the Petitioner, today also the Petitioner is not terminated from his service and he is officiating. According to the learned Counsel for the Respondents, Petitioner is not in service since June, 2020. According to the learned Counsel for the Respondent Institution, services of the Petitioner automatically stands terminated if he is absent for more than 30 days. We may not enter into the rigmarole about the aspect of termination or otherwise. The present Writ Petition is limited to the extent of payment of salary as per pay scale. The Petitioner is agitating non payment of salary as per the applicable pay scale since the date of appointment in the year 2009 and claims salary since that date.

5 According to the learned Counsel for the Institution, Institution has paid salary to the Petitioner as was applicable. The law is well settled. The employee of unaided College is entitled for

salary in the same pay scale as that of aided College. The UGC Regulation also prescribes pay scale. Same is also adopted in the State. In view of that, Petitioner, certainly is entitled for pay scale.

6 We had asked the learned Counsel for the Petitioner as to when Petitioner for the first time agitated about non payment of salary as per the applicable pay scale. The learned Counsel for the Petitioner submitted that for the first time, Petitioner agitated on 12.01.2021.

7 It would appear that all these years Petitioner never agitated. Respondent Institution is an unaided Institution. It has raised plea of weak financial position.

8 Be that as it may, considering that the Petitioner, for the first time, raised grievance about non payment of salary as per applicable pay scale only in January 2021, we are inclined to consider the case of the Petitioner for payment of salary as per pay scale from 01.01.2016 i.e. the period the 7th pay commission was made applicable. There is a dispute with regard to applicable pay scale. According to the learned counsel for Institution, Petitioner is paid salary as per applicable pay scale whereas according to the learned

Counsel for the Petitioner, Petitioner is paid salary much less than the applicable pay scale. In that view of the matter, we pass the following order:

- a. Respondent nos.4 and 5 are directed to pay salary to the Petitioner as per 7th pay commission from 01.01.2016 to May, 2020.
- b. Petitioner shall file an Application with the Joint Director of Higher Education regarding the arrears of salary the petitioner is entitled to from 01.01.2016 to May, 2020.
- c. Joint Director of Higher Education shall, after hearing the Petitioner and the Institution, conclude about pay scale applicable to the Petitioner from 01.01.2016.
- d. The Institution shall pay salary as would be admissible and arrived at by the Joint Director of Higher Education to the Petitioner after deducting the amount already paid.
- e. The Joint Director of Higher Education shall take decision upon the Application filed by the Petitioner, preferably within four months from the date of Application.

f. Writ Petition is disposed of. No costs.

(S. M. MODAK, J.)

(S.V. GANGAPURWALA, J.)